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COMMISSION
BEFORE THE FEDERAL ELECTION COMMISSION

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FEDERAL ELECTION
COMMISSION

2010 NOV 19 P 3:14

SENSITIVE

2010 NOV 19 PH 3:25

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In the Matter of

MUR 6351

William J. Pascrell

Pascrell for Congress and

Edward Farmer, as treasurer

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CASE CLOSURE UNDER THE

ENFORCEMENT PRIORITY

SYSTEM

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, matters that are low-rated

are

forwarded to the Commission with a recommendation for dismissal, or in certain cases where the complaint does not provide sufficient facts to indicate that a violation of the Federal Election Campaign Act of 1971, as amended (the "Act") may have occurred, a no reason to believe finding. The Office of General Counsel scored MUR 6351 as a low-rated matter.

In this matter, the complainant, congressional candidate Roland Straten, alleges that his opponent, incumbent Congressman William J. Pascrell, Jr., misused his Congressional mailing privileges by sending "campaign brochures" to constituents in two counties within his Congressional District.¹ The two four-page brochures, copies of which were attached to the complaint, were apparently disseminated using Congressman Pascrell's franked mail privileges and summarized the Congressman's "accomplishments" on behalf of his constituents. These mailers are almost identical, except that each contains information and statistics related to topics such as tax cuts, education, transportation and infrastructure, environment and green energy, health care, and seniors that are specific to the recipients in Essex County, New Jersey, and Passaic County, New Jersey.

¹ Congressman Pascrell represents New Jersey's Eighth Congressional District.

1 The complainant alleges that each brochure is "clearly a campaign piece," because
2 neither one claims to be a "newsletter, information piece or anything other than a piece of
3 campaign literature."² Further, according to the complainant, the mailers contain "outdated
4 information" and lack "information that is helpful to a resident on how to obtain government
5 services or specifics on rules and regulations on new bills." If the brochures were "truly []
6 informational piece[s]," the complainant maintains, "the information would be the same for both
7 counties."

8 The complainant acknowledges that the mailers were disseminated on or about July
9 31, 2010, approximately 95 days prior to the November 2, 2010, general election, in apparent
10 compliance with the statutory provision pertaining to franked mail, 39 U.S.C. § 3210, which
11 prohibits mass mailings postmarked fewer than 90 days immediately before a primary or general
12 election for Members of the House.³ However, he asserts that the mailers do not meet the
13 statute's requirement that the franking privilege be used for "matters of public concern or public
14 service," *id.*, and seems to imply that the costs of the mailers constituted an unreported in-kind
15 contribution to Pascrell for Congress and Edward Farmer, in his official capacity as treasurer,
16 (the "Committee"), in violation of 2 U.S.C. § 434(b). Therefore, according to the complainant,
17 the Committee should either reimburse the federal government for the cost of the mailers or
18 provide equal funding to the complainant's own congressional campaign.

19 In response, Congressman Pascrell acknowledges, on his own behalf and on behalf of his
20 Committee (collectively "respondents"), that his Congressional office sent the mailers, but

² In a news release issued August 4, 2010, by the complainant's campaign, he states that the mailer is a
"violation of the spirit, if not the letter of the law..." <http://rolandstraten.com/2010/08/pascrell-sends-out-campaign-mailer-at-taxpayer-expense/> . Last visited November 8, 2010.

³ New Jersey's primary election was held on June 8, 2010.

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1 asserts that they constituted "official government business undertaken by [his] Congressional
2 office" and asserts that the complaint is "unfounded and politically motivated." Further, the
3 respondents state that the mailers complied with all applicable franking rules and regulations. In
4 support of this claim, the respondents submitted advisory opinions apparently issued by the staff
5 of the House of Representatives Commission on Congressional Mailing Standards, which
6 deemed the mailers to be "newsletters" that were "frankable under the provisions of [39 U.S.C.
7 §§] 3210(a)(3)(A), 3210(a)(3)(B)."

8 The complaint in this matter contains no clear and concise recitation of facts which
9 describe violations of the Act or Commission regulations, *see* 2 U.S.C. § 437g and 11 C.F.R.
10 § 111.4(d)(3). Instead, the complaint alleges that the mailers did not constitute frankable
11 materials pursuant to 39 U.S.C. § 3210, a statute over which the Commission lacks jurisdiction.
12 Further, under the act, only a "person" may make a contribution or expenditure, 2 U.S.C.
13 §§ 431(8)(A) and (9)(A), and "person" is specifically defined in the Act to exclude "the Federal
14 Government or any authority of the Federal Government," 2 U.S.C. § 431(11). As such,
15 Congressman Pascrell's mailings, which were paid for by the federal government, would not
16 constitute a contribution or expenditure by the federal government or the Congressman acting in
17 his official capacity.

18 Therefore, in light of the lack of available information suggesting violations of the Act,
19 the Office of General Counsel recommends that the Commission find no reason to believe that
20 the Committee or Congressman William J. Pascrell violated 2 U.S.C. § 434(b) in connection
21 with the mailings sent by Congressman Pascrell's office.
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RECOMMENDATIONS

1. Find no reason to believe that William J. Pascrell, Jr. and Pascrell for Congress and Edward Farmer, in his official capacity as treasurer, violated 2 U.S.C. § 434(b); and
2. Close the file and approve the appropriate letters.

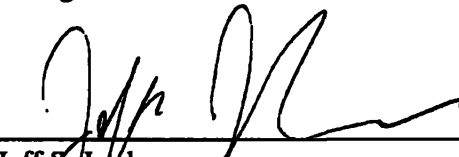
P. Christopher Hughey
Acting General Counsel

11/19/12
Date

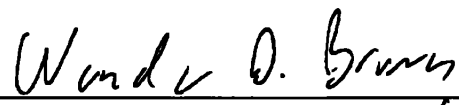
BY:



Gregory R. Baker
Special Counsel
Complaints Examination
& Legal Administration



Jeff S. Jordan
Supervisory Attorney
Complaints Examination
& Legal Administration



Wanda D. Brown
Attorney 